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CITY OF SOUTH BEND
DEPARTMENT OF LAW

May 31, 2012

Aladean DeRose
Acting City Attorney
City of South Bend
14th Floor
City-County Building
South Bend, Indiana 46601

Dear Ms. DeRose,

In January 2012, this office was presented with complaints that phone conversations at the South Bend Police Department (SBPD) were being recorded and listened to without the knowledge of the officers and persons speaking on these lines. Shortly thereafter this office asked the FBI to commence an investigation because the interception of telephone conversations could violate the Wiretap Act, Title 18, United States Code, Section 2510, et seq., an act that generally prohibits the intentional interception, use, or disclosure of wire and electronic communications unless a statutory exception applies. The following is a brief summary of that investigation.

SBPD had a practice over many years of recording certain police phone lines and radio communications, but not all phone lines. The investigation did not uncover a written document that specified exactly what phone lines were to be recorded; instead the investigation revealed a historical practice of oral instructions from Police Chief to the Director of Communications. Generally, it appears that all 911 calls and all police radio traffic were recorded. Additional lines usually recorded were police front desk lines, the Chief's office lines, a line for internal affairs, the main detective bureau line, and most of the division chiefs' lines.

Approximately two years ago during a change in leadership at the detective bureau, the Chief of the Detective Bureau's line was mistakenly not recorded and the line assigned to one of the detectives in the bureau was mistakenly recorded instead. Once this was learned, the recording on that line continued. Ultimately, certain conversations from that line were placed on five cassette tapes.

May 31, 2012

Page 2

In late March, we met with representatives from the City. We advised that our primary concern was that the SBPD practices comply with federal law.

We have carefully reviewed this matter and the existing case law and have discussed in detail with career experts in this area at the Department of Justice. It is our opinion that no federal prosecution is warranted.

It is our understanding that the practice in question here has terminated and that the SBPD is now preparing formal policies in the area of recording police lines so as to be in full compliance with the Wiretap Act. While we have not, and cannot, give any specific guidance on future compliance we would encourage the City and SBPD to implement a review system designed to ensure that both the Department's telephone recording policy and actual practice of recording remain in compliance with federal law and any other applicable laws. The details of such a program is a matter that the City and the SBPD must develop in consultation with their own legal counsel.

The thirteen cassette tapes (the five original cassettes, plus copies of those five, plus additional copies of three of those five for a total of thirteen) received during this investigation are being returned to your office. The obligations imposed by the subpoena served on the SBPD on January 20, 2012 are hereby released. Our investigation into the past practice and conduct of the SBPD in recording police phone lines is concluded and closed.

Sincerely,



David Capp
United States Attorney

DC/smc